

BEFORE THE
Federal Communications Commission
 WASHINGTON, DC 20554

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 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF SECRETARY

In the Matter of

 Federal-State Joint Board on
 Universal Service

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)
) CC Docket No. 96-45
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COMMENTS OF ARCH COMMUNICATIONS GROUP, INC.

Arch Communications Group, Inc. ("Arch"), hereby submits these Comments in response to the *Recommended Decision* adopted by the Federal-State Joint Board in the captioned proceeding.¹ As discussed below, the *Recommended Decision*, as it relates to universal service contribution requirements that will be imposed on paging companies, is inconsistent with the statutory mandate set forth in Sections 254(b)(4) and 254(d) of the Act that universal service payment obligations must be equitable and nondiscriminatory.

I. INTRODUCTION

Section 254 of the Telecommunications Act of 1996² establishes a statutory framework for the preservation and advancement of universal service. The first step toward achievement of these goals, as required by Section 254(a)(1) of the Act, was the establishment of a Federal-State Joint Board charged with the responsibility to make

¹ Arch provides wireless messaging services, primarily paging, to approximately 3.0 million units throughout the United States. Arch's operations include local, regional, and nationwide common carrier and private paging systems.

² Pub. L. No. 104-104, 110 Stat. 56 (1996).

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initial recommendations to the Commission. The *Recommended Decision* represents the culmination of the Joint Board's efforts. The duty now falls on the Commission to ensure that the rules adopted are consistent with the statutory scheme enacted by Congress.

One of the most critical issues to be determined in this proceeding is the appropriate means for obtaining the funding necessary to support universal service programs. Congress was not silent on this matter — it stated clearly in Sections 254(b)(4) and 254(d) that all providers of telecommunications services should be required to contribute to universal service support mechanisms, establishing, in essence, an “everyone must contribute” policy.³ But Congress' directive did not end there — it further prescribed a separate and distinct requirement, set forth in both Sections 254(b)(4) and 254(d), that contribution obligations were to be assessed on an “equitable and nondiscriminatory” basis.⁴ The general notion that everyone must pay is very different from the more specific analysis called for by the concept that those who pay are to do so only on an equitable and nondiscriminatory basis. Yet the Joint Board melded the two concepts by concluding, without explanation, that a “broad base of funding will ensure that competing

³ The Joint Board properly concluded that this requirement should be construed broadly. *Recommended Decision* at 784.

⁴ Section 254(b)(4) provides that “[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.” Section 254(d) contains a similar mandate: “Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanism established by the Commission to preserve and advance universal service.” It should be noted that, pursuant to Section 254(f), contributions made by companies subject to state universal service obligations must also be equitable and nondiscriminatory. The Joint Board concluded that “equitable and nondiscriminatory” should be equated with the concept of “competitive neutrality.” See *Recommended Decision* at ¶ 23.

firms make ‘equitable and nondiscriminatory contributions’ and will reduce the burden on any particular class of carrier.”⁵

This reasoning does not follow from the statutory language. If a broad base of funding resolves concerns regarding whether payments are equitable and nondiscriminatory, as the Joint Board suggests, then Congress could have achieved this result by simply mandating a system in which everyone pays. But Congress went beyond this — it established a system which mandated payments by all telecommunications services providers *and* it directed the Commission to ensure that such payments are equitable and nondiscriminatory. This latter requirement would have been superfluous under the Joint Board’s reasoning.

For these reasons, the cursory analysis of this issue undertaken by the Joint Board cannot withstand scrutiny. Arch submits that additional considerations must be taken into account if the Commission is to ensure that universal service contributions made by paging companies are equitable and nondiscriminatory.

II. EQUITY DICTATES THAT PAGING COMPANIES SHOULD CONTRIBUTE A LOWER AMOUNT PROPORTIONALLY THAN OTHER TELECOMMUNICATIONS CARRIERS

The Joint Board recommends that the statutory criteria set forth in Section 214(e)(1) should be used to determine which carriers are eligible to receive universal

⁵ *Id.*

service support.⁶ Stated simply, companies are eligible if they are common carriers that offer all of the services supported by universal service throughout designated service areas. Eligibility, in other words, rests in part on a carrier's ability to provide voice grade access to the public switched network, among other things.⁷ Since paging carriers cannot offer the requisite capabilities, they are ineligible to receive universal service support. This distinguishes paging companies from other segments of the telecommunications industry which are in a position to draw from the universal service fund. Arch submits that this distinction must be taken into account for purposes of determining whether universal service contributions made by paging companies are equitable and nondiscriminatory.

Take, for example, two companies, A (a paging company) and B (a small local exchange carrier). Under the *Recommended Decision*, A and B would incur the same universal service obligation if their gross revenues (less interconnection payments to other carriers) are identical. However, if A is ineligible for any universal support while B is able to obtain significant universal service funding, A's net universal service payments will be greater than B's, a clearly inequitable result. As this simple example demonstrates, Company A's status as an ineligible universal service support recipient must be taken into account to avoid discriminatory consequences that conflict with the Act's requirements.

The Joint Board improperly neglected to include this factor in its deliberations. Rather, the Joint Board assumed that its job was done by simply deciding that

⁶ *Recommended Decision* at § 155.

⁷ Additional services include (1) dual-tone multi-frequency signaling or its equivalent; (2) single-party service; (3) access to emergency services (including 911, where available); (4) access to operator services; (5) access to interexchange services; and (6) access to directory assistance.

everyone should pay, and it engaged in no further analysis on the issue of whether there may be material distinctions between carriers that may justify, indeed require, disparate payments. The Commission should remedy this oversight by adopting a system which obligates paging companies to pay, but at a lesser amount proportionally than other carriers. This could be accomplished through the adoption of some weighted offset — such as a fractional multiplier — which results in paging companies paying a lesser amount than carriers that are eligible for universal service support.

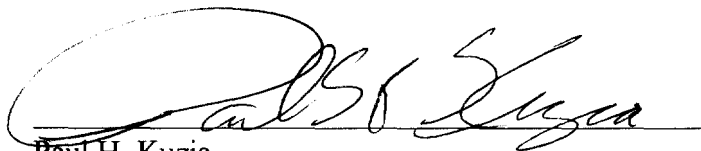
A reduction in the universal service contribution obligations for paging companies would be appropriate for a separate reason. The record developed in a separate proceeding⁸ demonstrated that paging carriers averaged only \$10 per unit per month.⁹ It will obviously be necessary, given these industry characteristics, for paging companies to “pass through” universal service obligations to their subscribers. But paging companies do not have the unfettered ability to assess what amounts to a rate increase on customers without creating the potential for a down-turn in demand. This distinguishes the paging industry from other providers of telecommunications services, such as local exchange carriers, that provide an essential service to a captive customer base. This important distinction between paging carriers and other industry participants must also be

⁸ *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, MD Docket No. 95-3, *Report and Order*, 10 FCC Rcd. 13512 (1995).

⁹ The Commission also found that the paging industry “has low profit margins compared to the cellular industry and to other public mobile services.” *Id.* at 13544. For this reason, the Commission established a separate and lower fee category for paging licensees, explaining that the reduced fees were intended to “provide an equitable cost allocation among cellular and other public mobile licensees and paging licensees based upon their relative market pricing structures while minimizing any adverse impact on the one-way paging industry.” *Id.*

taken into account by the Commission for purposes of establishing equitable and nondiscriminatory universal service contribution obligations applicable to the paging industry.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul H. Kuzia", written over a horizontal line.

Paul H. Kuzia

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December 17, 1996

CERTIFICATE OF SERVICE

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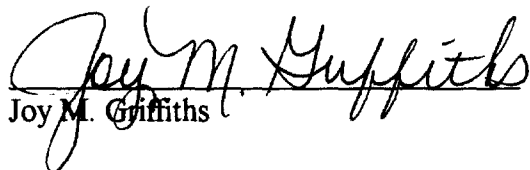
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